

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/896- 898 /2006-SM[BR]

Date 13/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :

(1-3) M/S TRIVENI ENGG & INDUSTRIES LTD
JANSATH ROAD, KHATAULI, DISTT. -
MUZAFFARNAGAR (U.P)

M/S TRIVENI ENGG & INDUSTRIES LTD

Appellant

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 291-293/2008-SM[BR] dated 15.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-I
MANGAL PANDEY NAGAR, OPP. C.C.S. UNIVERSITY
2. Adv. / Consult SHRI. RAJESH CHHIBBER ADV.
FA-9, NEW KAVI NAGAR GHAZIABAD[U.P]
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeals No.896-898 of 2006-SM (BR)

[Arising out of order in appeal No.251-CE/MRT-I/2005 dated 6.12.2005 passed by the Commissioner (Appeals) Central Excise, Meerut-I]

Date of Hearing/ Decision:15.1.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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- | | | |
|--|---|-----|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : | |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | } 2 |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

M/s.Triveni Engg. Indus. Ltd.

Appellants
[Rep. by Mr. Rajesh Chibber, Advocate]

Vs.

CCE, Meerut-I

Respondent
[Rep. by Mr. S. Gautam, SDR]

CORAM: Mr. P.K. Das, Member (Judicial)

● Final ORDER NO. 291-93/08-SM(BR) /Dated: 15.1.2008

Per P.K. Das:

The appellant filed this application for denial of credit on Welding Electrodes/M.S. Plates, Steel, Section, Bars, Gets, Flats, Welding Rod, Shrink Komp., etc.

2. After hearing both the sides and on perusal of the records, I find that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant Vs. CCE -2003 (159) ELT 553 (T-LB) disallowed the credit on welding electrodes. Further, the Tribunal in the case of J.K. Cement Vs. CCE reported in 2007 (211) ELT 235 (T-D), after considering the decision of the Hon'ble Rajasthan High Court, held that Welding Electrodes is not eligible for Cenvat credit. Accordingly, the denial of credit on Welding Electrodes is upheld.

3. Regarding the denial of credit on M.S. Plates, Steel, Section, Bars, Loctite, Shrink Komp., etc. the Id. Advocate submits that the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. reported in 2007 (214) ELT 510 (Rajasthan) allowed credit on M.S./S.S. plates used in workshop meant for repair and maintenance of machinery, which was upheld by the Hon'ble Supreme Court as reported in 2007 (214) ELT A-115. It is seen from the order of the Commissioner (Appeals) that the

● appellants did not disclose the specific use of these items nor submitted any corroborative evidence, where such goods were used. The Id. Advocate submits that it is revealed from the adjudication order that the appellant stated the use of these items. I find that there is a dispute on use of these items, which requires to be verified by the adjudicating authority.

4. So, the denial of credit on welding electrodes is upheld and regarding the other items, matter is remanded back to the adjudicating authority to examine the use of these items and case laws and to pass order. I find that the issue involved is the interpretation of the provisions of the law in respect of availment of credit and, therefore, penalty is not warranted. Accordingly, the penalty is set aside and the order is modified.

Order dictated & pronounced in open court on 15.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.